

United States District Court

For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT CORTEZ,) No. C 06-03827 EJD (PR)
Plaintiff,) ORDER AFTER REMAND;
vs.) SCEDULING DISPOSITIVE
M.S. EVANS, et al.,) MOTION
Defendant(s).)
_____)

Plaintiff, a California prisoner currently incarcerated at Salinas Valley State Prison (“SVSP”), filed a pro se civil rights action under 42 U.S.C. § 1983 against various SVSP employees. The Court granted Defendants’ motion for summary judgment and motion to dismiss. (Docket No. 50.) Plaintiff appealed the district court’s granting of summary judgment. The Ninth Circuit Court of Appeals vacated the summary judgment order only on Plaintiff’s claim under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and remanded to the district court to consider whether the piercing regulation was the least-restrictive means of furthering a compelling governmental interest. (Docket Nos. 58 & 59.)¹

¹ The matter was reassigned to this Court on April 25, 2011. (Docket No. 61.)

United States District Court
For the Northern District of California

1 In light of the foregoing, the Court hereby orders as follows:

2 1. No later than **fifty-six (56) days** from the date of this order,
 3 Defendants shall file a motion for summary judgment or other dispositive motion
 4 with respect to Plaintiff's RLUIPA claim, specifically on the issue on whether the
 5 piercing regulation was the least-restrictive means of furthering a compelling
 6 governmental interest.

7 Any motion for summary judgment shall be supported by adequate factual
 8 documentation and shall conform in all respects to Rule 56 of the Federal Rules of
 9 Civil Procedure. **Defendants are advised that summary judgment cannot be**
 10 **granted, nor qualified immunity found, if material facts are in dispute. If any**
 11 **Defendant is of the opinion that this case cannot be resolved by summary**
 12 **judgment, he shall so inform the Court prior to the date the summary**
 13 **judgment motion is due.**

14 In the event Defendants file a motion for summary judgment, the Ninth
 15 Circuit has held that Plaintiff must be concurrently provided the appropriate
 16 warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
 17 Woods, Nos. 09-15548 & 09-16113, slip op. at 7874.

18 2. Plaintiff's opposition to Defendants' dispositive motion shall be filed
 19 with the Court and served on Defendants' counsel no later than **twenty-eight (28)**
 20 **days** from the date Defendants' motion is filed.

21 3. Defendants shall file a reply brief no later than **fourteen (14) days**
 22 after Plaintiff's opposition is filed.

23
 24 DATED: 11/1/2012


 25 EDWARD J. DAVILA
 26 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT CORTEZ,

Case Number: CV06-03827 EJD

Plaintiff,

CERTIFICATE OF SERVICE

v.

M.S. EVANS, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/2/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roberto Cortez P-08468
Salinas Valley State Prison
P. O. Box 1050
Soledad, Ca 93960-1050

Dated: 11/2/2012

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk